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VIA ELECTRONIC MAIL

Re: Sierra Club FOIA Request

Dear Donna Maestro and EPA Region 3 FOIA Officer,

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, the Sierra Club requests records related to correspondence between EPA and Pennsylvania Department of Environmental Protection ("PaDEP") concerning Pennsylvania's development of a Reasonably Available Control Technology ("RACT") proposal pursuant to the 2008 ozone National Ambient Air Quality Standard. In addition, we ask that this FOIA request be given rapid consideration and processing for reasons explained in detail below. *See* 40 C.F.R. § 2.104(e).

Through this FOIA request, we respectfully seek copies of any and all records and/or other information relating to the following:

- Correspondence between EPA and PaDEP concerning the development of Pennsylvania's ozone RACT proposal, sent or received in the past 14 days from the date of this Request.

As noted above, the Sierra Club seeks rapid consideration and processing of this request. Pennsylvania's ozone RACT proposal is currently being developed and reviewed through multiple public processes, including evaluation by Pennsylvania's Citizens Advisory Council and Air Quality Technical Advisory Council, among others. Thus, timely access to EPA

correspondence and comments on the development of this proposal is critical for informed public engagement.

REQUEST FOR FEE WAIVER

The Sierra Club requests a waiver of all fees in connection with this FOIA request. FOIA carries a presumption of disclosure and FOIA's fee waiver provision was designed specifically to allow nonprofit public interest groups—such as the Sierra Club—to access government documents without the payment of fees.

More specifically, FOIA and the EPA's implementing regulations provide for a fee waiver when "the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 40 C.F.R. § 2.107(l)(1). Courts have stated that the statute "is to be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

In this case, the Sierra Club is just such a noncommercial requester. The Sierra Club is a nonprofit organization founded in 1892 that has grown to include over 630,000 members, with over 24,000 members in Pennsylvania (and over 59,000 members in the states of EPA Region 3). The Sierra Club's core objectives are to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.¹ A critical component of carrying out these objectives is the ability to educate our members and the public as to the status and development of regulations to control dangerous air pollution, such as ozone, and the role that EPA is playing in that process.

The Sierra Club's request for documents meets the two-pronged test for waiver of fees under FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1).

First, disclosure of this information is in the public interest because it will significantly contribute to the public understanding of the operations or activities of the government. *Id.*; *see also* 40 C.F.R. § 2.107(l)(2). Sierra Club's request clearly concerns the operations of the government in developing and ultimately approving Pennsylvania's ozone RACT proposal, and in EPA's position and concerns regarding the same. The information sought by the Sierra Club is not currently in the public domain and will significantly contribute to the public's understanding of the environmental and public health effects of NOx regulation in general, and of proposals to address NOx and other ozone precursors in Pennsylvania in specific. *See* 40 C.F.R. § 2.107(l)(2)(ii). The information will also significantly contribute to the public's understanding of how the EPA's involvement in implementation of air quality standards under the Clean Air Act help protect public health. The Sierra Club continuously works with volunteers in Pennsylvania, as well as throughout Region 3 and nationwide, to disseminate public and environmental health information just such pollution and the development of air

¹ *See, e.g.*, Sierra Club Policies, available at <http://www.sierraclub.org/policy>.

quality plans. Additional information and materials will allow the Sierra Club to create a more comprehensive educational program, and to continue its work in engaging and educating the public.

Second, the information sought by the Sierra Club is “not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(3). As a 501(c)(3) nonprofit, the Sierra Club has no commercial, trade or profit interest in the material requested. The Sierra Club will not be paid for, or receive other commercial or economic benefits from the publication or dissemination of, the requested materials. Accordingly, a fee waiver is appropriate.

Please feel free to e-mail me at zachary.fabish@sierraclub.org, or call me at (202) 675-7917, to discuss any aspect of this request. Please forward all records to the e-mail address provided below. Thank you in advance for your cooperation in this matter.

Sincerely,

/s/
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